IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

LA.App..No. 857 of 2005()

LAR.3/2001 of SUB COURT, PATHANAMTHITTA
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APPELLANT: CLAIMANT IN LAR:

ROY M. MATHEW, MUTHOOT,
KOZHENCHERRY.

BY ADV. SRI.K.P.SREEKUMAR
SRI.P.M.SATHEESH (PALAKKAL MAVILA VALAPP
SRI.P.GOPINATH

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY, GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE SECRETARY, PATHANAMTHITTA
MUNICIPALILTY, PATHANAMTHITTA.

R1 BY GOVT.PLEADER SMT.K.R.DEEPA

R2 BY ADV. SRI.A.N.RAJAN BABU

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 23/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A.No.857 of 2005

Dated this the 23rd day of October, 2007

JUDGMENT

Harun-Ul-Rashid,J.

This appeal arises against the judgment and decree in L.A.R.No.3 of 2001 on the file of the Sub Court, Pathanamthitta. The extent of land acquired in this case is 7 Ares of garden land in Sy.No.215/6-4 of Pathanamthitta Village. The acquisition was for the purpose of construction of Municipal Bus Stand in Pathanamthitta. The section 4(1) notification was published on 4-4-1995. The Land Acquisition Officer awarded Rs.19,770/- per cent. The acquired land is situated at the center of Pathanamthitta town and has much potential value and commercial importance. The property is lying on the side of Thiruvalla-Kumbazha PWD road and lying adjacent to the roads from Pathanamthitta-Sabarimala, Ranni and Erumeli. According to the claimant the acquired land is lying at a distance of only 200 metres towards the North from Thiruvalla-Kumbazha public road and Pathanamthitta Central Junction is only 250 metres away from the acquired land. He had also adduced evidence to

prove that several institutions - public and private, commercial complexes, cinema theatres, hotels, hospitals and several other institutions are located in Pathanamthitta town. In support of the claim for enhanced land value at the rate of Rs.5,00,000/- per cent the claimant produced Exts.A1 to A4 and also examined AW1 to AW3. The court below examined the potentiality of the property on the basis of Exts.A2 to A4 lands. The properties covered under Exts.A2 to A4 are lying in the heart of Pathanamthitta town and just opposite to the KSRTC bus stand. These properties have also proximity to public roads, government institutions, bus stand etc. and it has come out in evidence that the acquired land is lying at a distance of 100 feet away from Exts.A2 to A4 lands and it is lying on the back side of the K.S.R.T.C. bus stand. The court below, on an appreciation of the evidence found that Exts.A2 to A4 lands are lying contiguously as a single plot and the property under Ext.A4 is lying on the back side of the properties under Exts.A2 and A3. The court below, after appreciation of the oral and documentary evidence found that the acquired land has the same importance as that of Ext.A4 property due to its proximity to the public road and

institutions in Pathanamthitta town. The court below fixed the same value as shown in Ext.A4 document and Rs.38,000/- per cent was fixed as land value for the acquired land.

2. The claimant in this appeal has argued before us that the land value fixed by the court below is not a fair value considering the fact that the property is of prime importance and located in a center position in Pathanamthitta town. We have noticed the fact that Ext.A4 document was executed on 17-2-1994. But Section 4 (1) notification in this case was on 4-4-1995. There is a gap of 14 months between the two dates. The court below has not considered the time gap and therefore the principles laid down by the Supreme Court in Krishi Utpadan Mandi Samiti, Sahaswan v. Bipin Kumar, 2004(2) SCC 283 was not applied to the facts. We have also noticed the fact that the property acquired is lying in an important locality in Pathanamthitta town.

3. Counsel for the appellant also submitted before us that the court below did not consider his claim for injurious affection for the remaining property. According to him the land left after acquisition has now practically left unfit for any other purpose and

therefore the appellant is entitled to be compensated for injurious affection in respect of the remaining property. We have already noticed the fact that since the property is lying in a very important locality, the land value has to be assessed taking into consideration the importance of the locality and the increase in the land value.

4. In the above circumstances the judgment and decree under appeal are set aside. We remand the case to the court below for fresh consideration. The case shall be decided afresh within a period of four months from the date of receipt of a copy of the judgment, on the basis of the materials available on record. The appellant is entitled to refund of the court fee paid.

(KURIAN JOSEPH, JUDGE)

(HARUN-UL-RASHID, JUDGE)

ahg.

KURIAN JOSEPH &
HARUN-UL-RASHID, JJ.

L.A.A.No. 857 of 2005

JUDGMENT

23rd October, 2007